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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648-XC379

2013 Annual Determination for Sea Turtle Observer Requirement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NMFS) is providing notification that the agency will not identify additional fisheries to observe on the Annual Determination (AD) for 2013, pursuant to its authority under the Endangered Species Act (ESA). Through an AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate existing measures to prevent or reduce prohibited sea turtle takes, and to determine whether additional measures to implement the prohibition against sea turtle takes may be necessary. Fisheries identified in the 2010 AD (see Table 1) remain on the AD and are therefore required to carry observers upon NMFS' request until December 31, 2014.

ADDRESSES: See SUPPLEMENTARY INFORMATION for a listing of all Regional Offices.

FOR FURTHER INFORMATION CONTACT: Sara McNulty, Office of Protected Resources, 301-427-8402; Ellen Keane, Northeast Region, 978-282-8476; Dennis Klemm, Southeast Region, 727-824-5312; Christina Fahy, Southwest Region, 562-980-4023; Dawn Golden, Pacific Islands Region, 808-944-2252. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the Sea Turtle Observer Requirement for Fisheries (72 FR 43176, August 3, 2007) may be obtained at www.nmfs.noaa.gov/pr/species/turtles/regulations.htm or from any NMFS Regional Office at the addresses listed below:

- NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930;
- NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802;
- NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814.

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 et seq., NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (Lepidochelys kempii), loggerhead (Caretta caretta; North Pacific distinct population segment), leatherback (Dermochelys coriacea), and hawksbill (Eretmochelys imbricata) sea turtles are

listed as endangered. Loggerhead (Caretta caretta; Northwest Atlantic distinct population segment), green (Chelonia mydas), and olive ridley (Lepidochelys olivacea) sea turtles are listed as threatened, except for breeding colony populations of green turtles in Florida and on the Pacific coast of Mexico, and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of green and olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is one of the main sources of sea turtle injury and mortality nationwide. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Sections 9 and 11 of the ESA authorize the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) to establish procedures through which each year NMFS

will identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, either recreational or commercial, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

NMFS and/or interested cooperating entities will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for 5 years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to determine whether additional measures are needed to conserve and recover turtles.

2013 Annual Determination

NMFS is providing notification that the agency will not identify additional fisheries to observe for the 2013 AD, pursuant to its authority under the ESA. NMFS is not identifying additional fisheries at this time given lack of resources to implement new or expand existing observer programs to focus on sea turtles (50 CFR 222.402(a)(4)). Fisheries identified in the 2010 AD (see Table 1) remain on the AD and are therefore required to carry observers upon NMFS' request until December 31, 2014. NMFS did not identify additional fisheries to observe in the 2011 AD or in the 2012 AD.

Table 1–State and Federal Commercial Fisheries included on the Annual Determination

Fishery	Years Eligible to Carry Observers
<u>Trawl Fisheries</u>	
Atlantic shellfish bottom trawl	2010-2014
Mid-Atlantic bottom trawl	2010-2014
Mid-Atlantic mid-water trawl (including pair trawl)	2010-2014
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2010-2014
<u>Gillnet Fisheries</u>	
CA halibut, white seabass and other species set gillnet (>3.5 in mesh)	2010-2014
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.)	2010-2014
Chesapeake Bay inshore gillnet	2010-2014
Long Island inshore gillnet	2010-2014
Mid-Atlantic gillnet	2010-2014
North Carolina inshore gillnet	2010-2014
Northeast sink gillnet	2010-2014
Southeast Atlantic gillnet	2010-2014
<u>Trap/Pot Fisheries</u>	
Atlantic blue crab trap/pot	2010-2014
Atlantic mixed species trap/pot	2010-2014
Northeast/mid-Atlantic American lobster trap/pot	2010-2014
<u>Pound Net/Weir/Seine Fisheries</u>	
Mid-Atlantic haul/beach seine	2010-2014
Mid-Atlantic menhaden purse seine	2010-2014
U.S. mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net)	2010-2014
Virginia pound net	2010-2014

Dated: December 18, 2012.

Helen M. Golde,
 Acting Director,
 Office of Protected Resources,
 National Marine Fisheries Service.

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